

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
V.	§	
	§	7:19-cr-0522
RICARDO QUINTANILLA	§	
ARTURO CUELLAR, JR.	§	
DANIEL GARCIA	§	

MOTION TO CONTINUE AND EXTEND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, DANIEL GARCIA, by and through his undersigned counsel, and respectfully files this Motion to Continue the final pretrial hearing scheduled for April 9 and jury selection scheduled for April 26 and to extend the motions, exhibit list, and witness list deadline, and any other associated deadlines, of March 26, for the following reasons. (A status hearing is scheduled for April 1, after the March 26 deadline.)

BACKGROUND

In late February, the government indicated that it would mail additional discovery to the defense. In early March, the government sent the corrected password needed to access that discovery.

On or about March 12, the government filed a 404(b) notice.

On March 23, the defense received approximately 74 pages of additional discovery from the government (the discovery was originally received on March 22, but could not be accessed until March 23 when it was sent in a different format).

This is a document-intensive case. Several defendants intend to exercise their right to a jury trial.

ARGUMENT

The defense will need additional time to review the latest discovery provided before it can prepare its motions, exhibits, and witness list in response, which are currently due March 26, and before it can adequately prepare for trial, which is currently scheduled to start on April 26.

The defense is concerned whether a jury trial can be conducted safely during the pandemic with adequate social distancing with so many defendants, even more counsel, their staff, jurors (and potential jurors), court staff, and others present.

Even if a jury trial could be conducted safely, the precautions recommended by the CDC, such as social distancing and masks, would make it difficult to present large amounts of documentary evidence and conduct a fair trial. Normally, jurors would be close together with individual screens to help them view documents, but if they are spread apart, presumably without individual screens, it would be more difficult for them to view documents presented by either side. It would also be more difficult for them to assess the credibility of masked witnesses from a distance. The alternative of not requiring masks and social distancing could potentially endanger the trial participants or at the very least force the hand of those who are not willing to take such risks.

Furthermore, it would complicate efforts to select a fair and representative jury in the first place. Several potential jurors may try to opt out of jury service due to health concerns, reducing the number of potential jurors. Moreover, those most likely to opt out would likely be those who are older, have health issues, and hold certain political and personal views that tend to be associated with their views and behavior in response to recommended safety precautions, such as masks and social distancing, during the pandemic.

In sum, the defense is concerned that holding a jury trial now during the pandemic in this case will result in a non-representative jury panel that, due to the circumstances, may not be able to adequately and fairly evaluate the evidence and testimony. Moreover, the defense needs additional time to review the recent discovery provided before it can file its motions, finalize an exhibit list, and prepare for trial.

CONCLUSION

Accordingly, the defense respectfully requests that the final pretrial hearing and jury selection be continued and that the motions, exhibit list, and witness list deadline, and any associated deadlines, be extended for at least 60 days.

Respectfully submitted,

s/Christopher Sully
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CERTIFICATE OF CONFERENCE

Assistant United States Attorney Peter Nothstein indicated that the government is opposed to an extension of deadlines at this time, but was not taking a position on a continuance of final pretrial hearing and jury selection at this time. Codefendants' counsel Jaime Pena and Carlos Garcia indicated that they join in this motion.

s/Christopher Sully
CHRISTOPHER SULLY

CERTIFICATE OF SERVICE

On March 23, 2021, this motion was served on all counsel of record via ECF.

s/Christopher Sully
CHRISTOPHER SULLY